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Rob Sand
Auditor of State

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Fellow Members of the Iowa Executive Council,

I've looked closely at the Godfrey trial because I want to make an informed decision on voting on possible appeal expenses. I read the transcripts of the party's opening statements, closing arguments, and numerous trial-related filings. I am writing to inform you of the reasons why, after we have voted to pay trial costs already incurred, I plan to vote against spending additional taxpayer dollars on any appeal from the Godfrey case. My natural instinct is to sit down to discuss this in person, but for good reason, public meetings laws prevent us from doing that privately. On the other hand, I don't think that me bringing this up for the first time at a public meeting will allow you a fair chance to consider my points and shape your own thoughts. So, I hope this letter will be a beneficial start to any public discussion as we consider the right direction for the for this case.

I understand Treasurer Fitzgerald's decision to stop voting to pay these bills once the total costs reached \$500,000. Yet I have thus far voted to pay for the bills related to the Godfrey case because it is one of those cases with unique, complex legal questions that are expensive to resolve and difficult to settle. I know that because while an Assistant Attorney General, I prosecuted more than one of that type. I had to put in far more hours on those tough cases, and no one suggested I give up because it was too hard or complex. Yet I never had one that made two trips to the Iowa Supreme Court before trial, as this did.

But now those legal questions have been answered. We are left to look at the trial process. A jury of eight ordinary Iowans heard all the evidence that either side found worthwhile to present. Then they reached a unanimous verdict, even though unanimity was not required. They concluded that Chris Godfrey sufficiently proved his case. I learned in Attorney General Tom Miller's office that any verdict from any group of ordinary citizens, after they gave closest attention to a matter, deserves respect.

Iowa taxpayers should pay no more for actions that were, as the defense admitted at trial, political attempts to influence a job not meant to be political. The Worker's Compensation Commissioner job, which is the job Chris Godfrey held, is one that our legislature protected from politics. No one, even a Governor, can remove the Commissioner except "for cause" in situations like harassment or incapacitation. The job has a 6-year term, so that it is not in the rhythm of state politics. It requires Senate confirmation. It is like a judicial appointment. And like a judge, insulation from politics allows the Commissioner to focus on the law and doing the right thing, even if it is unpopular with politicians or the public. Yet, the defense agreed there was no cause to fire Godfrey. In fact, they argued he was treated this way for political reasons.

To be clear, this not my opinion—this is the defense that was presented at trial.¹ In short, if you believe the plaintiff, illegal discrimination occurred; if you believe the defense, Defendant undermined laws designed to protect our institutions from politics. For example, in opening statement: “like it or not, Godfrey was not perceived to be fair by the people who put Governor Branstad in office.” Counsel was wise to use those first four words, “like it or not.” While that claim would have prevented a costly verdict if it convinced the jury that Godfrey’s sexual orientation was not a factor in the decision, it isn’t very defensible itself. Now that it is clear these actions were, at best, undermining limits on political power, taxpayers should pay no more to defend them.

I realize the Executive Council members I am asking to help end this matter share their party affiliation with the Defendants. This does not have to be a determination made on tribal instincts. You can argue that as hard as it is to admit bad decisions publicly, former Governor Branstad did just that in an attempt to save taxpayer funds rather than settle at taxpayers’ expense. From there, you can still conclude it is best to be done with the matter at this point.

That is in part because appealing this verdict also doesn’t make sense from a legal or financial perspective. I do not see issues raised for appeal that would result in the case being dismissed. From appeal, if Defendant loses it only adds taxpayer costs, and if Defendant wins the best they can get is a do-over trial. Then, if Defendant loses again at trial, the cost to taxpayers skyrockets. Or if Defendant wins the second trial, we’ve just shifted money from the plaintiff verdict and fees over to additional defense fees, rather than saving money. If Defendant is adamant that district court evidentiary rulings were wrong, then they should not risk making those decisions controlling law in future cases by appealing.² I’ve had more than one trial ruling not appealed for fear of creating bad law if it were affirmed.

In addition to the nature of the defense and the financial road from here for taxpayers, I am concerned with the tone of this matter. Earlier this year when I reviewed a bill and found nearly \$3,000 in billing mistakes, defense counsel to their credit agreed without argument and discounted the amount from a future bill. But now, Defendant’s motion at the close of trial was one hundred and eighty-two pages. Most lawyers I’ve heard from have not dealt with a motion that long. Having read it entirely, I can say there parts taxpayers could have done without paying for. Hyperbolic language abounds: “All citizens of this state should hope that the Godfrey trial will not be remembered as a harbinger of the end of the American Democratic Experiment.” “Massacre,” “mutilate,” “bastardize.” Then, there is the jaw-droppingly inappropriate comparison of Michael Gartner, a prominent Democrat, owner of the Iowa Cubs, and trial witness, to Adolf Hitler. Perhaps it was written in passion without being revisited the next day. We all do such things. Yet, here even in a legal filing, where decorum is expected, taxpayers are paying for the unnecessarily antagonistic and divisive language of unprincipled politics. Let’s do better. I praised our Republican Governor’s State of the State speech this year because it deserved praise. When someone suggested my Republican election opponent go to Mitchellville women’s prison for a few years, I told them we are better than that suggestion. When someone suggested one of Iowa’s Republican US Senators was a criminal, I called that “not only

¹ To be clear, I take no position on Branstad’s choice of counsel. They are competent attorneys and deserve the common legal presumption that they chose the best defense available in the circumstances.

² For any reader less familiar with our judicial system: all trials happen in district court. District court decisions do not bind any courts in later cases. But if those decisions are appealed, they are re-decided by the next court, the appellate court. That appellate court decision does create binding precedent. So if you believe a District Court decision is particularly bad, the most risk-preventative decision is not to appeal it, in order to ensure it is not made law by an appellate court.

untruthful, but divisive and dangerous." Let's stop this divisiveness. I hope you will join with me in deciding to conclude this matter.

I'll add a final issue about which I have been questioned multiple times: should former Governor Branstad personally be held personally liable for the costs to taxpayers? Many in my party have encouraged me to reach that conclusion. Again, the law, not politics, should guide our answer. For taxpayers to collect from any public employee that caused taxpayers a loss through that employee's legally wrongful action, the employee's conduct must be "willful and wanton." This is a higher bar than what the Plaintiff had to clear to prove his case, but the same that he would have needed to clear to collect punitive damages. Yet the Plaintiff, at the conclusion of trial, opted not to request punitive damages from the jury. Ultimately, I would expect if any plaintiff felt that the defendant's conduct had been willful and wanton, that plaintiff would ask the jury for punitive damages to increase the value of the damages found. I defer to that apparent judgment. So, if Defendant's conduct was not willful and wanton, then taxpayers would fail to win a suit against Branstad to hold him personally liable. Despite other weighty considerations for such a suit, that alone is enough for me to conclude it should not be filed.

I look forward to learning your thoughts, and hope you agree that Iowa should move on.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Sand", with a stylized flourish at the end.

Rob Sand

Iowa Auditor of State